IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 595 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHANTABEN SHANTILAL SHAH

Versus

SUKHVANTRAI PRANJIVANDAS PATEL

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Appearance:

MR KG VAKHARIA for Petitioners

MR NAGIN N GANDHI for Respondent No. 1, 3

NOTICE SERVED for Respondent No. 2

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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 10/04/2000

ORAL JUDGEMENT

1. The petitioners are the original defendants against whom the respondents herein had filed the suit being Regular Civil Suit No.65/76. It is the case of the

plaintiffs in the said suit that, they are the owners of the suit premises and the deceased tenant was the tenant of the suit premises. That he was occupying the first floor at Rs.45/- per month. It is the case of the plaintiffs that the deceased tenant was in arrears of rent from 1.1.1974 and demand notice was given to him as contemplated by section 12(2) of the Bombay Rent Act. The defendants had not paid up the entire rent in response to the suit notice, therefore, the aforesaid suit was filed for getting the decree for possession on the ground of arrears of rent. The plaintiffs also claimed the possession of the premises on the ground of their bonafide requirement. After the aforesaid suit was filed, the deceased tenant had filed the standard rent application being Civil Misc.Application No.88/76. The same was consolidated with the suit. Learned trial court by interim order directed the tenant to pay up the arrears of rent on or before 29.3.1976 and asked him to pay the rent every month.

2. The deceased defendant resisted the suit by filing the written statement at Exh.10. In his written statement, it was contended that the suit is not bonafide. According to the deceased defendant, he had gone to pay the rent, but the plaintiffs have refused to receive the same. It was also prayed that the rent of Rs.45/- is excessive rent and the standard rent should be fixed. The original defendant - tenant died during the pendency of the suit, and therefore, his heirs were brought on the record.

3. Learned trial Judge framed various issues and after recording the evidence of the parties came to the conclusion that the standard rent of the suit premises is Rs.45/- per month. The trial court came to the conclusion that the tenant was not ready and willing to pay the rent. So far as bonafide requirement issue is concerned, the same was not pressed by the plaintiffs. The trial court accordingly decreed the suit for possession on the ground of arrears of rent.

4. The defendants carried the matter further in appeal by way of Regular Civil Appeal No.15/82. The said appeal was dismissed by the appellate court with costs on 3.3.1983.

5. The petitioners - tenants have preferred this civil revision application challenging the order of the appellate court.

6. I have gone through the record and proceedings of

the case and the judgments of both the courts below.

7. It is not in dispute that the plaintiffs have served the demand notice to the deceased tenant demanding the rent from 1.1.1974 to 31.5.1975. The notice was sent at Exh.41. The deceased tenant did not paid the entire arrears of rent as demanded in the suit notice and he raised the dispute of standard rent by making the separate application, but it was found that the application was made after filing the suit and not within one month from the receipt of the suit notice. So far as the amount of standard rent is concerned, both the courts below were absolutely justified in fixing the same at Rs.45/- per month. Learned appellate Judge has found in para 10 of his judgment that the tenant had not sent the entire money order within one month, and therefore, the landlord has rightly refused to accept the same. It is found that, there was arrears of rent for six months and if the tenant had sent the money order of four months, the landlords were entitled to refuse the same. In any case, it cannot be said that the entire arrears of rent was sent within one month as found by the courts below. It is also found that the dispute of standard rent was not taken within one month, and therefore, both the courts below had applied Section 12(3)(a) of the Bombay Rent Act. Learned appellate Judge has stated in para 19 of his judgment that, it is an admitted fact that the tenant had not raised any standard rent dispute within one month of the receipt of suit notice and that the standard rent application was filed being application No.88/76 after a period of about 9 to 10 months, and therefore, if the standard rent dispute is not raised within one month from the receipt of the suit notice, the case would fall under section 12(3)(a) of the Bombay Rent Act. In fact, even in reply to the suit notice also, no dispute of standard rent was taken. Under these circumstances, it was rightly found that the dispute of standard rent was not taken within one month, and therefore, the case would fall under section 12(3)(a) of the Bombay Rent Act. The Honourable Supreme Court has pointed out in 31(1) GLR, 209 that when the rent is payable by month, and if, no standard rent dispute is taken within one month from the date of receipt of the suit notice, there is no escape from the decree under section 12(3)(a) of the Bombay Rent Act. In my view, therefore, the courts below were perferctly justified in applying the provisions of section 12(3)(a) of the Bombay Rent Act in the present case.

8. However, even if it is believed that the case would fall under section 12(3)(b) of the Bombay Rent Act

on the ground that the dispute of the standard rent was raised within one month and if it is presumed that the rent is not payable by month then also the tenant has not complied with the condition of Section 12(3)(b) of the Bombay Rent Act. It was found in para 20 by the Appellate Judge that the tenant has not paid any rent in July, August and September, 1977. He has not made any payment in November, 1977 and he has not deposited any rent. It was found by the appellate court that, on going through the detail deposits made by the defendant tenant, it appears that, he has not made regular payment of rent in the court. The Honourable Supreme Court has held in the case of Mranalini B.Shah Vs. Bapalal M.Shah reported in 19 GLR, 1090 that, in order to get the benefit of Section 12(3)(b) of the Bombay Rent Act, the tenant has to deposit the rent regularly in the court. In that view of the matter, the petitioners are not entitled to any protection under section 12(3)(b) of the Bombay Rent Act.

7. In view of the aforesaid facts and circumstances, I do not find any substance in this civil revision application and the same deserves to be dismissed. Accordingly, civil revision application is dismissed. Rule discharged. Interim relief granted earlier stands vacated. No order as to costs.

(P.B.Majmudar,J.)
(pathan)